

637 kind are referred to the Administration, it may sometimes act in the
648 way desired by the chief and his lieutenants. Thus a chief once
discovered his wife in bed with a lover. The man was eventually
caught, and there were some who urged that he be hanged right
away, for no one would tell the Administration about the matter.
[604] However, more cautious counsels prevailed, the incident was
referred to the Administration, and the man was sentenced, in
accordance with the wishes of the chiefs and their lieutenants, to
three months' imprisonment. On his release, he was escorted from
Ngoni-land by a chief. Later the man returned, only to be driven
out again. The Administration is concerned with upholding the
position of chiefs, and in situations of this kind may regard, say,
● [606] adultery with a chief's wife as more heinous than with a commoner's
wife. On the other hand, the Administration cannot be relied on to
give its support automatically, and for this reason chiefs and lieutenants
may decide to act without reference to it. The Administration has even on occasion awarded damages to a commoner
against the Paramount Chief.

634 It is perhaps significant that a minor chief whose county contained a comparatively large number of villages from the segments
of other counties and whose claims to the county chieftainship was
disputed decided to hold a meeting to discuss county affairs not at
his court or at his village but at the capital of the county. He may
have hoped to quell dissension by emphasizing the links with the
pre-conquest past shared by the majority of his people.

344 Now that chiefs and others have begun building in burnt
brick, it may be that newly acceded chiefs may not find it so easy
182 to found their own villages. At the same time the policy of building
361 other public buildings in brick, such as treasuries and the proposed
welfare halls, in the vicinity of existing courts, may give increased
importance to the Native Authority centre. Already there have
been one or two attempts at opening shops near the courts to cater
for the needs of litigants, and it seems likely that the effective social
centre of the county will in future be the site of the Native Authority
rather than the capital village or the home of the chief.

8. Politics and the courts

692 The day-to-day work of the court takes up much of the time of
chiefs, assessors, and senior lieutenants of the chief. General discussion
of Ngoni law lies outside the particular theme of this book,
but we are here concerned with the courts in so far as they form part
of the political system of the tribe. That there is a close connexion

between political and judicial actions is not surprising. There is a connexion of this kind in every society, and the connexion is a particularly close one in societies like the Ngoni, where the same individuals act as legislators, administrators, and judges, and where the court does not confine itself merely to the legal issues in a dispute but examines the whole network of social relationships which are involved, with the object of restoring social order. 692

There are three ways in which this connexion can be seen. First, the court may be used as a vehicle for implementing the policy of the Native Authority. Secondly, the Administration may use the court to implement its policy. Thirdly, positions in the court may be used to satisfy men who seek political authority. We have to deal with the third point in our discussion of the development of the Native Authority. [557]

A chief anxious to gain favour with the Administration sees that his court enforces with heavy penalties the various regulations with which, for the time being, the Administration is concerned, such as those relating to agricultural control, and school attendance. A chief who does not wish to co-operate will neglect these regulations. Thus a few years ago there was a regulation that once a child had begun a two-year course at school, he or she must stay to finish it. In one county this rule was enforced much as the letter of the law indicated, in another it was completely ignored despite the protests of school-teachers, and in a third it was interpreted to mean that every child must go to school. About a year later the Administration decided that as promulgated the rule was *ultra vires*, and said it must be withdrawn. Nevertheless in some counties it is still enforced. These chiefs and courts are not being merely capricious. Some chiefs support the missions and their schools, others oppose them; some are in alliance with the school-teachers and other intelligentsia in their counties, others oppose them. These various attitudes and alignments are reflected in the way in which they respond to a new law. This is particularly noticeable when public delicts, such as absence from school, are concerned, for in general the court is its own law-enforcing agency. There is no independent police force to bring offenders to court whether or not the court wants to see them, but only the assessors, court clerk, messengers and others who, when they are not busy about their own affairs, may if they are so inclined wander through the villages looking for unlicensed dogs and unlicensed beer. Thus the enforcement of law relating to public delicts depends largely on the relationship between the Native Authority and the common people. 696
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696 In the court itself the magnitude of the penalties imposed and damages awarded is to some extent at the discretion of the court, and political considerations, among others, may influence judgments. Adultery with the wife of a chief is more heavily punished than ordinary adultery, and people from other tribes, particularly the Yao, are discriminated against. Ngoni courts maintain that they recognize only Ngoni law, even though the disputants may belong to other tribes. These ideas are familiar enough, but they indicate that questions of group membership, that is, political affiliation, and relations between groups, do influence the actions of the court. Within a county, hostility between a group having the ear of the court and one lacking it may find expression in procedural obstructions, such as always hearing a particular suit at the end of a day, or of continually postponing the hearing because some minor witness is absent.

661 The chief and his advisers usually endeavour to maintain a monopoly of access to the Administration, and this endeavour is 698 largely supported by the Administration as a matter of policy. In 696 the particular sphere of legal action, appeal from the Native Court to the District Officer is sometimes regarded as a challenge to this monopoly, and litigants are sometimes punished for stating that they intend to appeal. In a celebrated recent case when a chief was successfully sued in the District Commissioner's court for damages for adultery, his people came to him afterwards to express their condolences, as after a funeral, at the injury done to his high office by this procedure.

697 Native Courts are formally recognized under Ordinance by 698 the Administration, and hence changes in the indigenous legal system brought about by the Administration are legal changes, in that they have behind them all the paraphernalia of Ordinances, Letters Patent, Orders-in-Council, and Acts of the United Kingdom Parliament. This gives a special quality to manipulation of the legal system by the Administration, for this is really only another way of saying that effective sovereignty lies with the British Crown and not with Paramount Chief Mpezeni. But within the framework of analysis of the local situation, the actions of the Administration and of the chiefs in controlling the working of the courts are comparable sociologically.

The Administration is continually exercised about the quality of the work done in Native Courts, and in so far as all cases heard in Native Courts are subject to revision by the District Commissioner a direct check is, or could be, exerted on the way in which the courts operate. But Administrative intervention goes further

than this. Annual reports often draw attention to the smooth working of Native Courts and their impartiality, while attempts are made to establish British rules of evidence and of legal procedure generally. By trying thus to isolate the judiciary from the Native Authority and, more recently, by the proposal to introduce an entirely separate police force into rural areas, the Administration is engaged on an active policy of social change. One change that has already occurred widely is in the role played by the chief in his court. We have seen that traditionally disputes were settled by the senior lieutenants of the segment concerned and referred to the chief only if the lieutenants did not agree, for the chief represented the unity of the people and was above all disputes. When Administrative officers began to supervise the work of Native Courts they usually interpreted the chief's absence from his court as neglect of his duties. Pressure was put on chiefs to attend and participate in their courts, another step towards the secularization of their office. Nowadays some Ngoni chiefs stay out of their courts, others actively hear cases in them, and others drift in and out, sometimes intervening, sometimes waiting for difficult issues to be referred to them. The changed Native Court is one of the agencies whereby the transition from small-scale to large-scale society is to be made. The very successes which were hailed generally for Native Courts in Africa on the introduction of Indirect Rule are surely evidence of the importance attached by the Administration to maintaining courts of the right kind. [177]

The role of the court in the essentially political relationship between the Administration and the Native Authority is made clear when we consider the sources of law enforced in the courts. I have described elsewhere²² how many of the regulations sought for by the Administration are introduced as Native Authority Rules and Orders, which are then approved by the Administration. This is a harmless legal fiction which worries no one, since new legislation emanating from within the counties is enforced or not quite independently of whether or not it is referred to the Administration and is included in its list of Native Authority legislation. But it is significant that even this fiction can have political significance, for recently it was suggested that a soil erosion law, which had been introduced as a Native Authority Order, would be more accurately described as an Administrative rule which the Native Courts were empowered to enforce. This suggestion was rejected by a meeting of chiefs, who stated that they wished to retain the

²² Barnes, 'Political development', pp. 102-3.

review by the Administration, but in practice the cases are so numerous, the written account of them so brief, and often the handwriting of the record so bad, that it is difficult to make an adequate review. The Administration is able to keep some check on the financial transactions of the courts, and convictions for embezzlement are not uncommon; but the Administration does not greatly influence the decisions taken by the courts nor their enforcement. For though there are police on the lorry routes and crocodiles in the rivers, it is fairly easy for a determined man (or woman) who is dissatisfied with the treatment he has received in the courts to get away. He can usually get to a White farm or to a town, and once there it is not so easy to get him back. Men are not continually running away from the courts, for they usually accept decisions given against them, though appeals from a minor chief's court to the Ngoni Appeal Court are fairly common. Few people take their appeals further to the District Officer, and I have never heard of a case going on appeal beyond the Provincial Commissioner's Court. [692] [636] [646] [696]

The general moral approval by the people of the work of the courts which lies behind much of the effectiveness of the Native Court system does not extend automatically to all legal action as such. There is no widely held view that the decisions of the courts must be supported merely because they are the decisions of the courts. Some courts are good, some bad; and some decisions are good, some bad. The great majority of cases that come before a county court are brought by men and women living within the county, but sometimes a litigant begins his suit in a county court not his own, particularly in the Paramount Chief's county court, if he thinks that he will get a better hearing there. Yet chiefs support each other and a case brought before a chief by litigants from another county are sometimes thrown out, in accordance with the Native Courts Ordinance. [692] [691]

There is little moral sanction attaching to legal procedures, or methods of appeal, or even to the particular sums awarded as damages. The members of courts tend in the main to uphold each other's decisions, so that there is a fair amount of conformity throughout the ten counties. All those who work in courts have in fact an interest in increasing the power of the court system, which the people as a whole have not. Disputants will settle out of court if they can, for it is not so far to walk and the whole process is not so disruptive of social ties, but members of a court will sometimes challenge the right of independent arbitrators, village headmen and the like, to come to any binding decisions. [692] [681] [627]

The tenuousness of the moral sanctions behind the court assists in the long run in maintaining the courts as courts of equity, despite the contrary tendencies generated by political manipulation. This is also partly due to the relatively poor physical sanctions directly available to the court. If a man is actually inside the brick court building he can be handcuffed and taken off to the Administration in the township. But if a man A has been told by the court to bring C next Friday to hand over to B, then either he can run away, or he can offer B 5/- out of court and hope to hear no more about the matter; or he can persuade B that it would be wiser not to press his claim. It may be months before B can persuade the court to send one of its messengers to bring A in by force, and by that time anything may have happened, and even the court may have changed its mind about the case.

It is the Administration which possesses physical sanctions.

However, little moral support is given by the Black section of society to the exercise of these sanctions. The Native Court has to utilise the power of the Administration when it sentences a man to imprisonment, but this punishment is not regarded as a proper penalty for the offence for which the man is committed. If a man is ordered by the court to pay a fine or damages and refuses to do so, or maintains that he has no money, the court will order him to be imprisoned in the Administration's jail. When he comes out again, he is still under an obligation to pay. Associated with this use of prison is the lack of any stigma attached to having been, or actually being, in prison. Prisoners are allowed a good deal of liberty and at one time were sometimes allowed to go home for a visit. Unskilled prisoners are employed in the disposal of sewage in the township, and it is sometimes said that it is only this that keeps people out of prison. Clerks and others who are sent to prison are allowed considerable freedom and are sometimes to be seen visiting their friends in town. There is good technical training available for prisoners, and many craftsmen owe their start in their profession to a stay in prison. Prison is regarded as essentially a foreign institution introduced by the Whites, to be manipulated if possible by the Native Court, but in no way connected with making people suffer for their crimes.

The Administration is able to use physical sanctions not only against culprits but also to retain in the township possible witnesses in cases under investigation. For this reason, and also because it is likely to investigate incidental irregularities which may come to light in the course of an inquiry, people try to avoid becoming involved with it. This affects their actions where in the abstract

they might give their support to the enforcement of law. Murder has always been a public deficit in Ngoni society and before the conquest, a murderer was usually tried by senior lieutenants at the headquarters of either segment 4 or 10 and if found guilty was executed by the first lieutenant of the segment. Ngoni still think that murderers ought to be brought to justice, but the investigation of murder, a matter for the Northern Rhodesia Police, is likely to be obstructed even though the investigation may be carried out entirely by Africans. Those affected by the murder wish to see the murderer punished, but they also want to keep clear of the legal process involved. 167 696 692

10. External links

The death of Zwangendaba was followed by a dispersal of Ngoni groups into various parts of east and central Africa. The present dispersal of Ngoni men and women from Fort Jameson over southern Africa arises from a different social situation and takes place in a different way. The early mining enterprises of Southern Rhodesia, like those in the Union of South Africa before them, were based on migratory labour. As we have noted, Ngoni began going to Southern Rhodesia only a few months after they had been conquered, and they have continued to go ever since. Although the first batch of migrants were apparently ordered to go by someone in authority, the great bulk of men who have gone away subsequently have gone as individuals, even if they were recruited in batches of a hundred or more at a time. Thus, the dispersal of population is not directly related to the political system of the tribe, as was the pre-conquest dispersal. There has been a certain amount of regional preference, one county supplying more than its share of migrants to the Northern Rhodesia Copperbelt, the Nyasaland counties supplying proportionately more migrants to the Union as compared with the Northern Rhodesia counties, and so on, but these preferences are not marked. The inhabitants of each county, and indeed of nearly every village, have kinsfolk who are scattered over the towns and farms of the Rhodesias, Nyasaland, the Transvaal and farther south. 167 464

Ngoni men and women are thus bound by many ties to other persons and groups located far away from the villages of Ngoniland. For the most part these ties bind individuals, for each person has distant attachments which are not the same as his neighbours. In this volume we are concerned primarily with politics, with social relations between enduring groups, and we shall reserve our discussion of the social implications of migration for a later work in 167 567 464